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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Haase :
Application No. 09/736,117 :
Filed: December 13, 2000 :
Attorney Docket No. 56217USA9A.002 :
For: LASER POINTER WITH MULTIPLE :
COLOR BEAMS :

This is a decision on the petition under 37 CFR 1.181, filed October 26, 2005 (certificate of mailing date October 24, 2005) to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The Office contends that the above-identified application became abandoned for failure to submit a reply to the September 9, 2004 final Office action which set an extendable three month period for reply. No extensions of time or reply being received, the Office considered this application abandoned on December 10, 2004. A Notice of Abandonment was mailed on September 23, 2005.

Petitioner alleges that the September 9, 2004 final Office action was not received.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

A review of the record indicates no irregularity in the mailing of the September 9, 2004 final Office action, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because (1) practitioner did not include a statement that a thorough search of applicable docket records was conducted and (2) practitioner did not include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has not provided adequate evidence of non-receipt. The petition is dismissed.


Further correspondence with respect to this matter should be addressed as follows:

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